

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0359P

Use Tax

Calendar Years 1997, 1998, and 1999

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is an Indiana division of a Michigan corporation that was previously audited in 1992. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items, some of which are similar to those assessed in a prior audit.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that all matters were matters of interpretation and not tax avoidance.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer was previously audited with primarily the same issues. Taxpayer also failed to

remit use tax on approximately forty-seven percent (47%) of its purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

DW/RAW/JMS/dw 021001